

By: Senator(s) Kirby

To: Insurance

## SENATE BILL NO. 2932

1 AN ACT TO AMEND SECTION 71-5-11, MISSISSIPPI CODE OF 1972, TO  
2 DEFINE THE TERM "ADMINISTRATIVE EMPLOYER/EMPLOYEE LEASING COMPANY"  
3 AS IT RELATES TO THE MISSISSIPPI EMPLOYMENT SECURITY LAW; TO AMEND  
4 SECTION 71-5-385, MISSISSIPPI CODE OF 1972, TO REVISE THE METHOD  
5 OF FILING THE QUARTERLY WAGE AND CONTRIBUTION REPORTS BY  
6 EMPLOYERS; AND FOR RELATED PURPOSES.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

8 SECTION 1. Section 71-5-11, Mississippi Code of 1972, is  
9 amended as follows:

10 71-5-11. As used in this chapter, unless the context clearly  
11 requires otherwise:

12 A. "Base period" means the first four (4) of the last five  
13 (5) completed calendar quarters immediately preceding the first  
14 day of an individual's benefit year.

15 B. "Benefits" means the money payments payable to an  
16 individual, as provided in this chapter, with respect to his  
17 unemployment.

18 C. "Benefit year" with respect to any individual means the  
19 period beginning with the first day of the first week with respect  
20 to which he first files a valid claim for benefits, and ending  
21 with the day preceding the same day of the same month in the next  
22 calendar year; and, thereafter, the period beginning with the  
23 first day of the first week with respect to which he next files  
24 his valid claim for benefits, and ending with the day preceding  
25 the same day of the same month in the next calendar year. Any  
26 claim for benefits made in accordance with Section 71-5-515 shall  
27 be deemed to be a "valid claim" for purposes of this subsection if  
28 the individual has been paid the wages for insured work required  
29 under Section 71-5-511(e).

30 D. "Contributions" means the money payments to the State  
31 Unemployment Compensation Fund required by this chapter.

32 E. "Calendar quarter" means the period of three (3)  
33 consecutive calendar months ending on March 31, June 30, September  
34 30, or December 31.

35 F. "Commission" means the Mississippi Employment Security  
36 Commission.

37 G. "Employing unit" means this state or another state or any  
38 instrumentalities or any political subdivisions thereof or any of  
39 their instrumentalities or any instrumentality of more than one  
40 (1) of the foregoing or any instrumentality of any of the  
41 foregoing and one or more other states or political subdivisions,  
42 any individual or type of organization, including any partnership,  
43 association, trust, estate, joint stock company, insurance  
44 company, or corporation, whether domestic or foreign, or the  
45 receiver, trustee in bankruptcy, trustee or successor thereof, or  
46 the legal representative of a deceased person, which has or had in  
47 its employ one or more individuals performing services for it  
48 within this state. All individuals performing services within  
49 this state for any employing unit which maintains two (2) or more  
50 separate establishments within this state shall be deemed to be  
51 employed by a single employing unit for all the purposes of this  
52 chapter. Each individual employed to perform or to assist in  
53 performing the work of any agent or employee of an employing unit  
54 shall be deemed to be employed by such employing unit for all  
55 purposes of this chapter, whether such individual was hired or  
56 paid directly by such employing unit or by such agent or employee,  
57 provided the employing unit had actual or constructive knowledge  
58 of the work. All individuals performing services in the employ of  
59 an elected fee-paid county official, other than those related by  
60 blood or marriage within the third degree computed by the rule of  
61 the civil law to such fee-paid county official, shall be deemed to  
62 be employed by such county as the employing unit for all the  
63 purposes of this chapter. For purposes of defining an "employing

64 unit" which shall pay contributions on remuneration paid to  
65 individuals, if two (2) or more related corporations concurrently  
66 employ the same individual and compensate such individual through  
67 a common paymaster which is one of such corporations, then each  
68 such corporation shall be considered to have paid as remuneration  
69 to such individual only the amounts actually disbursed by it to  
70 such individual and shall not be considered to have paid as  
71 remuneration to such individual such amounts actually disbursed to  
72 such individual by another of such corporations.

73 H. "Employer" means:

74 (1) Any employing unit which,

75 (a) In any calendar quarter in either the current  
76 or preceding calendar year paid for service in employment wages of  
77 One Thousand Five Hundred Dollars (\$1,500.00) or more, except as  
78 provided in paragraph (9) of this subsection, or

79 (b) For some portion of a day in each of twenty  
80 (20) different calendar weeks, whether or not such weeks were  
81 consecutive, in either the current or the preceding calendar year  
82 had in employment at least one (1) individual (irrespective of  
83 whether the same individual was in employment in each such day),  
84 except as provided in paragraph (9) of this subsection;

85 (2) Any employing unit for which service in employment,  
86 as defined in subsection I(3) of this section, is performed;

87 (3) Any employing unit for which service in employment,  
88 as defined in subsection I(4) of this section, is performed;

89 (4) (a) Any employing unit for which agricultural  
90 labor, as defined in subsection I(6) of this section, is  
91 performed;

92 (b) Any employing unit for which domestic service  
93 in employment, as defined in subsection I(7) of this section, is  
94 performed;

95 (5) Any individual or employing unit which acquired the  
96 organization, trade, business, or substantially all the assets  
97 thereof, of another which at the time of such acquisition was an

98 employer subject to this chapter;

99           (6) Any individual or employing unit which acquired its  
100 organization, trade, business, or substantially all the assets  
101 thereof, from another employing unit, if the employment record of  
102 the acquiring individual or employing unit subsequent to such  
103 acquisition, together with the employment record of the acquired  
104 organization, trade, or business prior to such acquisition, both  
105 within the same calendar year, would be sufficient to constitute  
106 an employing unit an employer subject to this chapter under  
107 paragraph (1) or (3) of this subsection;

108           (7) Any employing unit which, having become an employer  
109 under paragraph (1), (3), (5) or (6) of this subsection or under  
110 any other provisions of this chapter, has not, under Section  
111 71-5-361, ceased to be an employer subject to this chapter; or

112           (8) For the effective period of its election pursuant  
113 to Section 71-5-361(3), any other employing unit which has elected  
114 to become subject to this chapter.

115           (9) (a) In determining whether or not an employing  
116 unit for which service other than domestic service is also  
117 performed is an employer under paragraph (1) or (4)(a) of this  
118 subsection, the wages earned or the employment of an employee  
119 performing domestic service, shall not be taken into account.

120           (b) In determining whether or not an employing  
121 unit for which service other than agricultural labor is also  
122 performed is an employer under paragraph (1) or (4)(b) of this  
123 subsection, the wages earned or the employment of an employee  
124 performing services in agricultural labor shall not be taken into  
125 account. If an employing unit is determined an employer of  
126 agricultural labor, such employing unit shall be determined an  
127 employer for purposes of paragraph (1) of this subsection.

128           (10) The term "administrative employer/employee leasing  
129 company" means an entity which by written agreement obligates  
130 itself to perform specified employer responsibilities as to  
131 specified employees only as to those contractually specified

132 responsibilities, including payment of wages, payroll preparation,  
133 calculation, collection, reporting and payment of payroll taxes,  
134 and which may also include administration of unemployment  
135 compensation claims, securing of workers' compensation and other  
136 worker injury or illness insurance coverage, administration of  
137 claims attendant to such insurance coverage, sponsoring and  
138 administration of employee benefit plans, including employee  
139 welfare benefit plans and employee pension benefit plans and  
140 provision of benefits attendant to such plans, and providing  
141 professional guidance as to employment matters.

142 I. "Employment" means and includes:

143 (1) Any service performed, which was employment as  
144 defined in this section and, subject to the other provisions of  
145 this subsection, including service in interstate commerce,  
146 performed for wages or under any contract of hire, written or  
147 oral, express or implied.

148 (2) Services performed for remuneration for a  
149 principal:

150 (a) As an agent-driver or commission-driver  
151 engaged in distributing meat products, vegetable products, fruit  
152 products, bakery products, beverages (other than milk), or laundry  
153 or dry cleaning services;

154 (b) As a traveling or city salesman, other than as  
155 an agent-driver or commission-driver, engaged upon a full-time  
156 basis in the solicitation on behalf of, and the transmission to, a  
157 principal (except for sideline sales activities on behalf of some  
158 other person) of orders from wholesalers, retailers, contractors,  
159 or operator of hotels, restaurants, or other similar  
160 establishments for merchandise for resale or supplies for use in  
161 their business operations.

162 Provided, that for purposes of this subsection, the term  
163 "employment" shall include services described in subsections  
164 I(2)(a) and (b) of this section, only if:

165 (i) The contract of service contemplates that

166 substantially all of the services are to be performed personally  
167 by such individual;

168 (ii) The individual does not have a  
169 substantial investment in facilities used in connection with the  
170 performance of the services (other than in facilities for  
171 transportation); and

172 (iii) The services are not in the nature of a  
173 single transaction that is not part of a continuing relationship  
174 with the person for whom the services are performed.

175 (3) Service performed in the employ of this state or  
176 any of its instrumentalities or any political subdivision thereof  
177 or any of its instrumentalities or any instrumentality of more  
178 than one (1) of the foregoing or any instrumentality of any of the  
179 foregoing and one or more other states or political subdivisions;  
180 provided that such service is excluded from "employment" as  
181 defined in the Federal Unemployment Tax Act by Section 3306(c)(7)  
182 of that act and is not excluded from "employment" under subsection  
183 I(5) of this section.

184 (4) (a) Services performed in the employ of a  
185 religious, charitable, educational, or other organization, but  
186 only if the service is excluded from "employment" as defined in  
187 the Federal Unemployment Tax Act, 26 USCA Sec. 3306(c)(8), and

188 (b) The organization had four (4) or more  
189 individuals in employment for some portion of a day in each of  
190 twenty (20) different weeks, whether or not such weeks were  
191 consecutive, within the current or preceding calendar year,  
192 regardless of whether they were employed at the same moment of  
193 time.

194 (5) For the purposes of subsections I(3) and (4) of  
195 this section, the term "employment" does not apply to service  
196 performed:

197 (a) In the employ of:

198 (i) A church or convention or association of  
199 churches; or

200 (ii) An organization which is operated  
201 primarily for religious purposes and which is operated,  
202 supervised, controlled, or principally supported by a church or  
203 convention or association of churches; or

204 (b) By a duly ordained, commissioned, or licensed  
205 minister of a church in the exercise of his ministry, or by a  
206 member of a religious order in the exercise of duties required by  
207 such order; or

208 (c) In the employ of a governmental entity  
209 referred to in subsection I(3), if such service is performed by an  
210 individual in the exercise of duties:

211 (i) As an elected official;

212 (ii) As a member of a legislative body, or a  
213 member of the judiciary, of a state or political subdivision;

214 (iii) As a member of the State National Guard  
215 or Air National Guard;

216 (iv) As an employee serving on a temporary  
217 basis in case of fire, storm, snow, earthquake, flood or similar  
218 emergency;

219 (v) In a position which, under or pursuant to  
220 the laws of this state, is designated as:

221 1. A major nontenured policy-making or  
222 advisory position, or

223 2. A policy-making or advisory position  
224 the performance of the duties of which ordinarily does not require  
225 more than eight (8) hours per week; or

226 (d) In a facility conducted for the purpose of  
227 carrying out a program of rehabilitation for individuals whose  
228 earning capacity is impaired by age or physical or mental  
229 deficiency or injury, or providing remunerative work for  
230 individuals who because of their impaired physical or mental  
231 capacity cannot be readily absorbed in the competitive labor  
232 market, by an individual receiving such rehabilitation or  
233 remunerative work; or

234 (e) By an inmate of a custodial or penal  
235 institution; or

236 (f) As part of an unemployment work-relief or  
237 work-training program assisted or financed in whole or in part by  
238 any federal agency or agency of a state or political subdivision  
239 thereof, by an individual receiving such work relief or work  
240 training, unless coverage of such service is required by federal  
241 law or regulation.

242 (6) Service performed by an individual in agricultural  
243 labor as defined in paragraph (15)(a) of this subsection when:

244 (a) Such service is performed for a person who:

245 (i) During any calendar quarter in either the  
246 current or the preceding calendar year paid remuneration in cash  
247 of Twenty Thousand Dollars (\$20,000.00) or more to individuals  
248 employed in agricultural labor, or

249 (ii) For some portion of a day in each of  
250 twenty (20) different calendar weeks, whether or not such weeks  
251 were consecutive, in either the current or the preceding calendar  
252 year, employed in agricultural labor ten (10) or more individuals,  
253 regardless of whether they were employed at the same moment of  
254 time.

255  
256 (b) For the purposes of subsection I(6) any  
257 individual who is a member of a crew furnished by a crew leader to  
258 perform service in agricultural labor for any other person shall  
259 be treated as an employee of such crew leader:

260 (i) If such crew leader holds a valid  
261 certificate of registration under the Farm Labor Contractor  
262 Registration Act of 1963; or substantially all the members of such  
263 crew operate or maintain tractors, mechanized harvesting or crop  
264 dusting equipment, or any other mechanized equipment, which is  
265 provided by such crew leader; and

266 (ii) If such individual is not an employee of  
267 such other person within the meaning of subsection I(1).



268                   (c) For the purpose of subsection I(6), in the  
269 case of any individual who is furnished by a crew leader to  
270 perform service in agricultural labor for any other person and who  
271 is not treated as an employee of such crew leader under paragraph  
272 (6)(b) of this subsection:

273                   (i) Such other person and not the crew leader  
274 shall be treated as the employer of such individual; and

275                   (ii) Such other person shall be treated as  
276 having paid cash remuneration to such individual in an amount  
277 equal to the amount of cash remuneration paid to such individual  
278 by the crew leader (either on his own behalf or on behalf of such  
279 other person) for the service in agricultural labor performed for  
280 such other person.

281                   (d) For the purposes of subsection I(6) the term  
282 "crew leader" means an individual who:

283                   (i) Furnishes individuals to perform service  
284 in agricultural labor for any other person;

285                   (ii) Pays (either on his own behalf or on  
286 behalf of such other person) the individuals so furnished by him  
287 for the service in agricultural labor performed by them; and

288                   (iii) Has not entered into a written  
289 agreement with such other person under which such individual is  
290 designated as an employee of such other person.

291                   (7) The term "employment" shall include domestic  
292 service in a private home, local college club or local chapter of  
293 a college fraternity or sorority performed for an employing unit  
294 which paid cash remuneration of One Thousand Dollars (\$1,000.00)  
295 or more in any calendar quarter in the current or the preceding  
296 calendar year to individuals employed in such domestic service.  
297 For the purpose of this subsection, the term "employment" does not  
298 apply to service performed as a "sitter" at a hospital in the  
299 employ of an individual.

300                   (8) An individual's entire service, performed within or  
301 both within and without this state, if:

302 (a) The service is localized in this state; or

303 (b) The service is not localized in any state but  
304 some of the service is performed in this state, and

305 (i) The base of operations or, if there is no  
306 base of operations, the place from which such service is directed  
307 or controlled is in this state; or

308 (ii) The base of operations or place from  
309 which such service is directed or controlled is not in any state  
310 in which some part of the service is performed, but the  
311 individual's residence is in this state.

312 (9) Services not covered under paragraph (8) of this  
313 subsection and performed entirely without this state, with respect  
314 to no part of which contributions are required and paid under an  
315 unemployment compensation law of any other state or of the federal  
316 government, shall be deemed to be employment subject to this  
317 chapter if the individual performing such services is a resident  
318 of this state and the commission approves the election of the  
319 employing unit for whom such services are performed that the  
320 entire service of such individual shall be deemed to be employment  
321 subject to this chapter.

322 (10) Service shall be deemed to be localized within a  
323 state if:

324 (a) The service is performed entirely within such  
325 state; or

326 (b) The service is performed both within and  
327 without such state, but the service performed without such state  
328 is incidental to the individual's service within the state; for  
329 example, is temporary or transitory in nature or consists of  
330 isolated transactions.

331 (11) The services of an individual who is a citizen of  
332 the United States, performed outside the United States (except in  
333 Canada), in the employ of an American employer (other than service  
334 which is deemed "employment" under the provisions of paragraph  
335 (8), (9) or (10) of this subsection or the parallel provisions of

336 another state's law), if:

337                   (a) The employer's principal place of business in  
338 the United States is located in this state; or

339                   (b) The employer has no place of business in the  
340 United States, but

341                   (i) The employer is an individual who is a  
342 resident of this state; or

343                   (ii) The employer is a corporation which is  
344 organized under the laws of this state; or

345                   (iii) The employer is a partnership or a  
346 trust and the number of the partners or trustees who are residents  
347 of this state is greater than the number who are residents of any  
348 one (1) other state; or

349                   (c) None of the criteria of subparagraphs (a) and  
350 (b) of this paragraph are met but the employer has elected  
351 coverage in this state or, the employer having failed to elect  
352 coverage in any state, the individual has filed a claim for  
353 benefits, based on such service, under the law of this state; or

354                   (d) An "American employer," for purposes of this  
355 paragraph, means a person who is:

356                   (i) An individual who is a resident of the  
357 United States; or

358                   (ii) A partnership if two-thirds (2/3) or  
359 more of the partners are residents of the United States; or

360                   (iii) A trust, if all of the trustees are  
361 residents of the United States; or

362                   (iv) A corporation organized under the laws  
363 of the United States or of any state.

364                   (12) All services performed by an officer or member of  
365 the crew of an American vessel on or in connection with such  
366 vessel, if the operating office from which the operations of such  
367 vessel operating on navigable waters within, or within and  
368 without, the United States are ordinarily and regularly  
369 supervised, managed, directed, and controlled is within this

370 state; notwithstanding the provisions of subsection I(8).

371 (13) Service with respect to which a tax is required to  
372 be paid under any federal law imposing a tax against which credit  
373 may be taken for contributions required to be paid into a state  
374 unemployment fund, or which as a condition for full tax credit  
375 against the tax imposed by the Federal Unemployment Tax Act, 26  
376 USCA Sec. 3301 et seq., is required to be covered under this  
377 chapter, notwithstanding any other provisions of this subsection.

378 (14) Services performed by an individual for wages  
379 shall be deemed to be employment subject to this chapter unless  
380 and until it is shown to the satisfaction of the commission that  
381 such individual has been and will continue to be free from control  
382 and direction over the performance of such services both under his  
383 contract of service and in fact; and the relationship of employer  
384 and employee shall be determined in accordance with the principles  
385 of the common law governing the relation of master and servant.

386 (15) The term "employment" shall not include:

387 (a) Agricultural labor, except as provided in  
388 subsection I(6) of this section. The term "agricultural labor"  
389 includes all services performed:

390 (i) On a farm or in a forest in the employ of  
391 any employing unit in connection with cultivating the soil, in  
392 connection with cutting, planting, deadening, marking or otherwise  
393 improving timber, or in connection with raising or harvesting any  
394 agricultural or horticultural commodity, including the raising,  
395 shearing, feeding, caring for, training, and management of  
396 livestock, bees, poultry, fur-bearing animals, and wildlife;

397 (ii) In the employ of the owner or tenant or  
398 other operator of a farm, in connection with the operation,  
399 management, conservation, improvement, or maintenance of such farm  
400 and its tools and equipment, or in salvaging timber or clearing  
401 land of brush and other debris left by a hurricane, if the major  
402 part of such service is performed on a farm;

403 (iii) In connection with the production or

404 harvesting of naval stores products or any commodity defined in  
405 the Federal Agricultural Marketing Act, 12 USCA Sec. 1141j(g), or  
406 in connection with the raising or harvesting of mushrooms, or in  
407 connection with the ginning of cotton, or in connection with the  
408 operation or maintenance of ditches, canals, reservoirs, or  
409 waterways not owned or operated for profit, used exclusively for  
410 supplying and storing water for farming purposes;

411 (iv) (A) In the employ of the operator of a  
412 farm in handling, planting, drying, packing, packaging,  
413 processing, freezing, grading, storing, or delivering to storage  
414 or to market or to a carrier for transportation to market, in its  
415 unmanufactured state, any agricultural or horticultural commodity;  
416 but only if such operator produced more than one-half (1/2) of the  
417 commodity with respect to which such service is performed;

418 (B) In the employ of a group of  
419 operators of farms (or a cooperative organization of which such  
420 operators are members) in the performance of service described in  
421 subparagraph (A), but only if such operators produced more than  
422 one-half (1/2) of the commodity with respect to which such service  
423 is performed;

424 (C) The provisions of subparagraphs (A)  
425 and (B) shall not be deemed to be applicable with respect to  
426 service performed in connection with commercial canning or  
427 commercial freezing or in connection with any agricultural or  
428 horticultural commodity after its delivery to a terminal market  
429 for distribution for consumption;

430 (v) On a farm operated for profit if such  
431 service is not in the course of the employer's trade or business;

432 (vi) As used in paragraph (15)(a) of this  
433 subsection, the term "farm" includes stock, dairy, poultry, fruit,  
434 fur-bearing animals, and truck farms, plantations, ranches,  
435 nurseries, ranges, greenhouses, or other similar structures used  
436 primarily for the raising of agricultural or horticultural  
437 commodities, and orchards.

438                   (b) Domestic service in a private home, local  
439 college club, or local chapter of a college fraternity or  
440 sorority, except as provided in subsection I(7) of this section,  
441 or service performed as a "sitter" at a hospital in the employ of  
442 an individual.

443                   (c) Casual labor not in the usual course of the  
444 employing unit's trade or business.

445                   (d) Service performed by an individual in the  
446 employ of his son, daughter, or spouse, and service performed by a  
447 child under the age of twenty-one (21) in the employ of his father  
448 or mother.

449                   (e) Service performed in the employ of the United  
450 States government or of an instrumentality wholly owned by the  
451 United States; except that if the Congress of the United States  
452 shall permit states to require any instrumentalities of the United  
453 States to make payments into an unemployment fund under a state  
454 unemployment compensation act, then to the extent permitted by  
455 Congress and from and after the date as of which such permission  
456 becomes effective, all of the provisions of this chapter shall be  
457 applicable to such instrumentalities and to services performed by  
458 employees for such instrumentalities in the same manner, to the  
459 same extent, and on the same terms as to all other employers and  
460 employing units. If this state should not be certified under the  
461 Federal Unemployment Tax Act, 26 USCA Sec. 3304(c), for any year,  
462 then the payment required by such instrumentality with respect to  
463 such year shall be deemed to have been erroneously collected and  
464 shall be refunded by the commission from the fund in accordance  
465 with the provisions of Section 71-5-383.

466                   (f) Service performed in the employ of an  
467 "employer" as defined by the Railroad Unemployment Insurance Act,  
468 45 USCA Sec. 351(a), or as an "employee representative" as defined  
469 by the Railroad Unemployment Insurance Act, 45 USCA Sec. 351(f),  
470 and service with respect to which unemployment compensation is  
471 payable under an unemployment compensation system for maritime

472 employees, or under any other unemployment compensation system  
473 established by an act of Congress; provided that the commission is  
474 hereby authorized and directed to enter into agreements with the  
475 proper agencies under such act or acts of Congress, which  
476 agreements shall become effective ten (10) days after publication  
477 thereof in the manner provided in Section 71-5-117 for general  
478 rules, to provide reciprocal treatment to individuals who have,  
479 after acquiring potential rights to benefits under this chapter,  
480 acquired rights to unemployment compensation under such act or  
481 acts of Congress or who have, after acquiring potential rights to  
482 unemployment compensation under such act or acts of Congress,  
483 acquired rights to benefits under this chapter.

484 (g) Service performed in any calendar quarter in  
485 the employ of any organization exempt from income tax under the  
486 Internal Revenue Code, 26 USCA Sec. 501(a) (other than an  
487 organization described in 26 USCA Sec. 401(a)), or exempt from  
488 income tax under 26 USCA Sec. 521 if the remuneration for such  
489 service is less than Fifty Dollars (\$50.00).

490 (h) Service performed in the employ of a school,  
491 college, or university if such service is performed:

492 (i) By a student who is enrolled and is  
493 regularly attending classes at such school, college, or  
494 university, or

495 (ii) By the spouse of such a student if such  
496 spouse is advised, at the time such spouse commences to perform  
497 such service, that

498 (A) The employment of such spouse to  
499 perform such service is provided under a program to provide  
500 financial assistance to such student by such school, college, or  
501 university, and

502 (B) Such employment will not be covered  
503 by any program of unemployment insurance.

504 (i) Service performed by an individual under the  
505 age of twenty-two (22) who is enrolled at a nonprofit or public

506 educational institution which normally maintains a regular faculty  
507 and curriculum and normally has a regularly organized body of  
508 students in attendance at the place where its educational  
509 activities are carried on, as a student in a full-time program  
510 taken for credit at such institution, which combines academic  
511 instruction with work experience, if such service is an integral  
512 part of such program and such institution has so certified to the  
513 employer, except that this subparagraph shall not apply to service  
514 performed in a program established for or on behalf of an employer  
515 or group of employers.

516           (j) Service performed in the employ of a hospital,  
517 if such service is performed by a patient of the hospital, as  
518 defined in subsection L of this section.

519           (k) Service performed as a student nurse in the  
520 employ of a hospital or a nurses' training school by an individual  
521 who is enrolled and is regularly attending classes in a nurses'  
522 training school chartered or approved pursuant to state law; and  
523 services performed as an intern in the employ of a hospital by an  
524 individual who has completed a four-year course in a medical  
525 school chartered or approved pursuant to state law.

526           (l) Service performed by an individual as an  
527 insurance agent or as an insurance solicitor, if all such service  
528 performed by such individual is performed for remuneration solely  
529 by way of commission.

530           (m) Service performed by an individual under the  
531 age of eighteen (18) in the delivery or distribution of newspapers  
532 or shopping news, not including delivery or distribution to any  
533 point for subsequent delivery or distribution.

534           (n) If the services performed during one-half  
535 (1/2) or more of any pay period by an employee for the employing  
536 unit employing him constitute employment, all the services of such  
537 employee for such period shall be deemed to be employment; but if  
538 the services performed during more than one-half (1/2) of any such  
539 pay period by an employee for the employing unit employing him do



540 not constitute employment, then none of the services of such  
541 employee for such period shall be deemed to be employment. As  
542 used in this subsection the term "pay period" means a period (of  
543 not more than thirty-one (31) consecutive days) for which a  
544 payment of remuneration is ordinarily made to the employee by the  
545 employing unit employing him.

546 (o) Service performed by an individual who is a  
547 CETA/PSE (Comprehensive Employment Training Act/Public Service  
548 Employment) participant unless coverage of such service is  
549 required by federal law or regulation.

550 (p) Service performed by a barber or beautician  
551 whose work station is leased to him or her by the owner of the  
552 shop in which he or she works and who is compensated directly by  
553 the patrons he or she serves and who is free from direction and  
554 control by the lessor.

555 J. "Employment office" means a free public employment office  
556 or branch thereof, operated by this state or maintained as a part  
557 of the state controlled system of public employment offices.

558 "Public employment service" means the operation of a program  
559 that offers free placement and referral services to applicants and  
560 employers, including job development.

561 K. "Fund" means the Unemployment Compensation Fund  
562 established by this chapter, to which all contributions required  
563 and from which all benefits provided under this chapter shall be  
564 paid.

565 L. "Hospital" means an institution which has been licensed,  
566 certified, or approved by the Mississippi Commission on Hospital  
567 Care as a hospital.

568 M. "Institution of higher learning," for the purposes of  
569 this section, means an educational institution which:

570 (1) Admits as regular students only individuals having a  
571 certificate of graduation from a high school, or the recognized  
572 equivalent of such a certificate;

573 (2) Is legally authorized in this state to provide a

574 program of education beyond high school;

575 (3) Provides an educational program for which it awards  
576 a bachelor's or higher degree, or provides a program which is  
577 acceptable for full credit toward such a degree, a program of  
578 postgraduate or postdoctoral studies, or a program of training to  
579 prepare students for gainful employment in a recognized  
580 occupation;

581 (4) Is a public or other nonprofit institution;

582 (5) Notwithstanding any of the foregoing provisions of  
583 this subsection, all colleges and universities in this state are  
584 institutions of higher learning for purposes of this section.

585 N. (1) "State" includes, in addition to the states of the  
586 United States of America, the District of Columbia, Commonwealth  
587 of Puerto Rico and the Virgin Islands.

588 (2) The term "United States" when used in a geographical  
589 sense includes the states, the District of Columbia, Commonwealth  
590 of Puerto Rico and the Virgin Islands.

591 (3) The provisions of subsections (1) and (2) of  
592 paragraph N, as including the Virgin Islands, shall become  
593 effective on the day after the day on which the United States  
594 Secretary of Labor approves for the first time under Section  
595 3304(a) of the Internal Revenue Code of 1954 an unemployment  
596 compensation law submitted to the secretary by the Virgin Islands  
597 for such approval.

598 O. "Unemployment."

599 (1) An individual shall be deemed "unemployed" in any  
600 week during which he performs no services and with respect to  
601 which no wages are payable to him, or in any week of less than  
602 full-time work if the wages payable to him with respect to such  
603 week are less than his weekly benefit amount as computed and  
604 adjusted in Section 71-5-505. The commission shall prescribe  
605 regulations applicable to unemployed individuals, making such  
606 distinctions in the procedure as to total unemployment, part-total  
607 unemployment, partial unemployment of individuals attached to

608 their regular jobs, and other forms of short-time work, as the  
609 commission deems necessary.

610 (2) An individual's week of total unemployment shall be  
611 deemed to commence only after his registration at an employment  
612 office, except as the commission may by regulation otherwise  
613 prescribe.

614 P. (1) "Wages" means all remuneration for personal  
615 services, including commissions and bonuses and the cash value of  
616 all remuneration in any medium other than cash, except that  
617 "wages," for purposes of determining employer's coverage and  
618 payment of contributions for agricultural and domestic service  
619 means cash remuneration only. The reasonable cash value of  
620 remuneration in any medium other than cash shall be estimated and  
621 determined in accordance with rules prescribed by the commission;  
622 provided, that the term "wages" shall not include:

623 (a) The amount of any payment made to, or on  
624 behalf of, an employee under a plan or system established by an  
625 employer which makes provision for his employees generally or for  
626 a class or classes of his employees (including any amount paid by  
627 an employer for insurance or annuities, or into a fund, to provide  
628 for any such payment), on account of:

629 (i) Retirement, or

630 (ii) Sickness or accident disability, or

631 (iii) Medical or hospitalization expenses in  
632 connection with sickness or actual disability, or

633 (iv) Death, provided the employee:

634 (A) Has not the option to receive,  
635 instead of provision for such death benefit, any part of such  
636 payment or, if such death benefit is insured, any part of the  
637 premiums (or contributions to premiums) paid by his employer, and

638 (B) Has not the right, under the  
639 provisions of the plan or system or policy of insurance providing  
640 for such death benefit, to assign such benefit or to receive a  
641 cash consideration in lieu of such benefit, either upon his

642 withdrawal from the plan or system providing for such benefit or  
643 upon termination of such plan or system or policy of insurance or  
644 of his employment with such employer;

645 (b) Dismissal payments which the employer is not  
646 legally required to make;

647 (c) Payment by an employer (without deduction from  
648 the remuneration of an employee) of the tax imposed by the  
649 Internal Revenue Code, 26 USCA Sec. 3101;

650 (d) From and after January 1, 1992, the amount of  
651 any payment made to or on behalf of an employee for a "cafeteria"  
652 plan, which meets the following requirements:

653 (i) Qualifies under Section 125 of the  
654 Internal Revenue Code;

655 (ii) Covers only employees;

656 (iii) Covers only noncash benefits;

657 (iv) Does not include deferred compensation  
658 plans.

659 (2) [Not enacted].

660 Q. "Week" means calendar week or such period of seven (7)  
661 consecutive days as the commission may by regulation prescribe.  
662 The commission may by regulation prescribe that a week shall be  
663 deemed to be in, within, or during any benefit year which includes  
664 any part of such week.

665 R. "Insured work" means "employment" for "employers."

666 S. The term "includes" and "including," when used in a  
667 definition contained in this chapter, shall not be deemed to  
668 exclude other things otherwise within the meaning of the term  
669 defined.

670 T. "Employee leasing arrangement" means any agreement  
671 between an employee leasing firm and a client, whereby specified  
672 client responsibilities such as payment of wages, reporting of  
673 wages for unemployment insurance purposes, payment of unemployment  
674 insurance contributions and other such administrative duties are  
675 to be performed by an employee leasing firm, on an ongoing basis.

676 U. "Employee leasing firm" means any entity which provides  
677 specified duties for a client company such as payment of wages,  
678 reporting of wages for unemployment insurance purposes, payment of  
679 unemployment insurance contributions and other administrative  
680 duties, in connection with the client's employees, that are  
681 directed and controlled by the client and that are providing  
682 ongoing services for the client.

683 V. "Temporary help firm" means an entity which hires its own  
684 employees and provides those employees to other individuals or  
685 organizations to perform some service, to support or supplement  
686 the existing work force in special situations such as employee  
687 absences, temporary skill shortages, seasonal workloads and  
688 special assignments and projects, with the expectation that the  
689 worker's position will be terminated upon the completion of the  
690 specified task or function.

691 SECTION 2. Section 71-5-385, Mississippi Code of 1972, is  
692 amended as follows:

693 71-5-385. All administrative employer organizations may  
694 elect to file the employer's quarterly wage and contribution  
695 report either individually for each client company, or  
696 collectively by filing one (1) report covering all of its client  
697 companies. The report shall disclose the name, identification  
698 number and unemployed rate, as well as, the employees' name,  
699 social security number, and gross, taxable and exempt wages for  
700 the quarter for each client company. Failure to follow the  
701 reporting requirements in this section may result in a penalty not  
702 to exceed Five Hundred Dollars (\$500.00) each calendar quarter for  
703 each employer connected with the report.

704 SECTION 3. This act shall take effect and be in force from  
705 and after July 1, 1999.